

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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### Legend

X =  
Company =  
State A =  
Date 1 =  
Date 2 =  
Date 3 =  
Date 4 =  
a =  
b =  
c =

Dear :

This letter responds to your request for a private letter ruling regarding the treatment of stock transferred to you pursuant to a divorce decree. The facts represented in your request follow.

You and your spouse, X, were married and resided in State A, a non-community property state. On Date 1, a shares of restricted stock were issued to X by Company, X's employer, as compensation for the performance of services. The restricted stock is held by X in X's name and is non-transferable in accordance with the terms of Company's Equity Compensation Plan. On Date 2, you and X were divorced by a decree ordered by the State A Superior Court.

The division of restricted stock occurred in the context of a judicial proceeding and was formalized in the divorce decree and associated Memorandum of Decision of the Superior Court (together referred to as the "divorce decree"). Pursuant to the divorce decree, you are entitled to receive an allocation of X's restricted stock awards as well as any dividends or dividend equivalents attributable to your allocation of X's

restricted stock awards. More specifically, you are entitled to c% of the shares of Company restricted stock issued to X on Date 1.

Pursuant to the terms of the divorce decree, you and X intend that the transfer of the restricted stock constitute a transfer incident to a divorce in accordance with Section 1041 of the Internal Revenue Code (Code) and not a taxable event for either you or X. The divorce decree further provides that you and X intend a result consistent with Revenue Ruling 2002-22, 2002-1 C.B. 849, and Revenue Ruling 2004-60, 2004-1 C.B. 1051. The divorce decree also provides that the restricted stock shall be divided as part of the property settlement and shall not be alimony or child support. In accordance with the terms of the divorce decree, you will be responsible for paying all costs attributable to your allocation of the restricted stock, including taxes other than Medicare and Social Security taxes.

After the divorce decree was issued and until the restricted stock vested, the restricted stock remained in the name of X. On Date 3, a shares of restricted stock vested and became transferable. On Date 4, the stock issued to X on Date 1 was divided, and b shares were allocated to you and placed in a brokerage account under your name.

Your request asks for rulings that: (1) the division of the restricted stock after vesting is not a taxable event and (2) the income attributable to the vesting of your allocation of the restricted stock on Date 3 is includible in your gross income, regardless of whether Company reports such income on a form 1099-MISC filed on your behalf, and all subsequent tax consequences with respect to the stock will be yours.

Section 83(a) of the Code provides, in general, that if property is transferred to any person in connection with the performance of services, the excess of the fair market value of the property over the amount, if any, paid for the property is included in the gross income of the person performing the services in the first taxable year in which the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever is applicable.

Section 1041 of the Code provides, in part, that no gain or loss shall be recognized on a transfer of property from an individual to a former spouse, but only if the transfer is incident to the divorce. Incident to divorce is defined in section 1041(c) as a transfer of property within one year after the date on which the marriage ceases or a transfer of property that is related to the cessation of the marriage.

In Rev. Rul. 2002-22, individuals A and B were married and resided in a non-community property state. During the marriage, Corporation Y granted nonstatutory stock options to A. Pursuant to a property settlement incorporated into their divorce, A transferred one-third of the options to B. B exercised all of the options, and received Y stock with a fair market value in excess of the exercise price of the options. The ruling

concludes that the options are property within the meaning of section 1041, and it explains that section 1041 confers nonrecognition treatment on any gain that A may otherwise realize when A transfers the options to B. Under the ruling, A is not required to include in gross income any income resulting from B's exercise of the options. When B exercises the options, B must include in income an amount determined under section 83(a) as if B were the person who performed the services. The ruling further provides that the same conclusions would apply if A and B resided in a community property state and all or some of the options constituted community property that was divided between A and B as part of their divorce.

In light of the specific provisions of the divorce decree in this case, and the other relevant facts, we rule as follows:

1. The division of the restricted stock occurred in the context of a judicial proceeding that was formalized in a divorce decree and is therefore a nontaxable event under section 1041.

2. The income attributable to the vesting of the restricted stock is includible in your gross income for federal income tax consequences, and all subsequent tax consequences with respect to such stock will be yours.

A copy of this letter should be attached to any of your income tax returns to which it is relevant.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a properly executed penalty of perjury statement. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely yours,

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THOMAS D. SCHOLZ  
Assistant Branch Chief  
Executive Compensation Branch  
Office of Division Counsel/Associate  
Chief Counsel (Tax Exempt and  
Government Entities)